

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

NOEL RODRIGUEZ,	)	Case No. CV 14-984-DSF(AJW)
	)	
Petitioner,	)	MEMORANDUM AND ORDER
	)	DISMISSING PETITION
v.	)	
	)	
G.J. JANDA, Warden,	)	
	)	
Respondent.	)	
	)	

On October 15, 1997, petitioner was convicted of first degree murder. [Petition at 2]. The California Court of Appeal affirmed petitioner's conviction on March 16, 1999, and the California Supreme Court denied his petition for review on April 21, 1999. [Petition at 2-3].

On August 17, 2011, petitioner filed a petition for a writ of habeas corpus in this Court. Case No. CV 11-6759-DSF(AJW). Judgment dismissing the petition as untimely was entered on March 5, 2012. Petitioner's requests for a certificate of appealability were denied both by this Court and by the Court of Appeals.

Petitioner filed the present petition for a writ of habeas corpus on February 7, 2014. Like the petition filed in Case No. CV 11-6759-

1 DSF(AJW), this petition challenges petitioner's 1997 murder conviction.  
2 [Petitioner at 2].

3 A federal court must dismiss a second or successive petition that  
4 raises the same grounds as a prior petition. 28 U.S.C. § 2244(b)(1). A  
5 federal court also must dismiss a second or successive petition raising  
6 a new ground unless the petitioner can show that (1) the claim rests on  
7 a new, retroactive, constitutional right or (2) the factual basis of  
8 the claim was not previously discoverable through due diligence, and  
9 those new facts establish by clear and convincing evidence that but for  
10 the constitutional error, no reasonable factfinder would have found the  
11 applicant guilty of the underlying offense. 28 U.S.C. §  
12 2244(b)(2)(A)-(B). It is not the district court, however, that decides  
13 whether a second or successive petition may proceed. Rather, "[b]efore  
14 a second or successive application permitted by this section is filed  
15 in the district court, the applicant shall move in the appropriate  
16 court of appeals for an order authorizing the district court to  
17 consider the application." 28 U.S.C. § 2244(b)(3)(A). Absent  
18 authorization from the Court of Appeals, this Court lacks jurisdiction  
19 over this second or successive petition. Burton v. Stewart, 549 U.S.  
20 147, 157 (2007); Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir.  
21 2001), cert. denied, 538 U.S. 984 (2003).

22 Petitioner's first federal petition was dismissed with prejudice  
23 as untimely. A dismissal with prejudice under the statute of  
24 limitation renders subsequent petitions successive under the AEDPA.  
25 McNabb v. Yates, 576 F.3d 1028, 1029-1030 (9th Cir. 2009) (per curiam).

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1 Because petitioner has not obtained leave from the Court of Appeals to  
2 file a successive petition, the petition for a writ of habeas corpus is  
3 dismissed for lack of jurisdiction.

4 **IT IS SO ORDERED.**

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6 Dated: March 13, 2014

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Dale S. Fischer  
United States District Judge

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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 WESTERN DIVISION

11 NOEL RODRIGUEZ, ) Case No. CV 14-984-DSF(AJW)  
12 )  
13 Petitioner, )  
14 ) JUDGMENT  
15 v. )  
16 )  
17 G.J. JANDA, Warden, )  
18 )  
19 Respondent. )  
20 )  
21 )  
22 )  
23 )  
24 )  
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28 )

17 It is hereby adjudged that the petition for a writ of habeas  
18 corpus is dismissed for lack of jurisdiction.  
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20 Dated: \_\_\_\_\_  
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22 \_\_\_\_\_  
23 Dale S. Fischer  
24 United States District Judge  
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26  
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